

GRAYBILL TERMINALS CO.

IBLA 78-11  
78-53

Decided January 5, 1978

Appeals from decisions of the Wyoming State Office, Bureau of Land Management, rejecting oil and gas lease offers W 60413 and W 60466.

Affirmed.

1. Oil and Gas Leases; Applications: Drawings--  
Oil and Gas Leases: Cancellation

Where a corporation files an application for a lease for a certain parcel of land and is the successful offeror in the drawing and the president and/or the vice-president of the corporation also filed applications for the same parcel of land in the same drawing as individuals, the offer of the corporation must be rejected because the officers of the corporation stand in a fiduciary relationship to the corporation and thereby increase its chances to be the successful applicant.

APPEARANCES: W.R. Boehm, President of Graybill Terminals Company, for Appellant.

OPINION BY ADMINISTRATIVE JUDGE FISHMAN

This pertains to the appeals from the September 14, 1977, and October 21, 1977, decisions of the Wyoming State Office, Bureau of Land Management (BLM), rejecting oil and gas lease offers W 60413 and W 60466 for failure to comply with 43 CFR 3112.5-2, regarding multiple filings, which provides in relevant part:

When any person, association, corporation, or other entity or business enterprise files an offer to lease for inclusion in a drawing, and an offer (or offers) to lease is filed for the same lands in the same drawing by any person or party acting for, on

behalf of, or in collusion with the other person, association, corporation, entity or business enterprise, under any agreement, scheme, or plan which would give either, or both, a greater probability of successfully obtaining a lease, or interest therein, in any public drawing, held pursuant to 5 3110.1-6(b), all offers filed by either party will be rejected.

Graybill Terminals Company was the successful Applicant for parcel numbers WY-51 and WY-104 on the July 1977 simultaneous filing list. The company's drawing entry card for WY-104 (W 60466) was signed by W. R. Boehm, its president, and a drawing entry card for the same parcel was also filed by Grayson W. Boehm, vice-president of the company, in his individual capacity. As to tract WY-51 (W 60413) offers therefor were filed by (1) the company, (2) its president, and (3) its vice-president, Grayson W. Boehm.

The decision in W 60466 rejecting the lease offer states:

The filing by the vice president of your company for the identical lands filed for by the company in the same drawing appears to be a design for the company's benefit and to enhance the mathematical probabilities of success in the drawing as against individual offers not entering into such an agreement.

In the statement of reasons, Appellant points out that the vice president filed personally using private funds and that the regulation does not prohibit such filings in the absence of any agreement, scheme, or plan between the company and the vice president.

In W 60413, the decision rejecting the company's offer recited that No. 1 and No. 2 drawees did not pay the advance rental within the time allowed and that Appellant was drawee No. 3. It further stated:

The filings by William R. Boehm [president] and Grayson W. Boehm [vice-president] for the identical lands filed for by your company in the same drawing appears to be a design to enhance the mathematical probabilities of success in the drawing as against individual offers not entering into such an arrangement. See regulation 43 CFR 3112.5-2.

[11 A similar situation was before the Board in Panra Corporation, 27 IBLA 220 (1976). In that case the corporation, as well as its vice-president and secretary, each filed an offer for the same parcel in

the same drawing. The Board quoted the following statement from Alvest, Inc. v. Superior Oil Corp., 398 P.2d 213, 215 (Alaska, 1965), which is pertinent here:

A corporate officer or director stands in a fiduciary relationship to his corporation. Out of this relationship arises the duty of reasonably protecting the interests of the corporation. It is inconsistent with and a breach of such duty for an officer or director to take advantage of a business opportunity for his own personal profit when, applying ethical standards of what is fair and equitable in a particular situation, the opportunity should belong to the corporation. Where a business opportunity is one in which the corporation has a legitimate interest, the officer or director may not take the opportunity for himself. If he does, he will hold all resulting benefit and profit in his-fiduciary capacity for the use and benefit of the corporation. [Citations omitted.]

It is of no avail to Appellant that its vice-president filed personally, using private funds. Had he been successful in the drawing he would have held the lease in a fiduciary capacity for Appellant's benefit, in the absence of certain factors not shown to be present here, which are discussed below. In effect, Appellant in W 60466 had two chances to win--the corporate application filed on its behalf plus that filed by its vice-president. In W 64013, Appellant had three chances to win, its application and the individual ones of its president and vice-president. Thus, 43 CFR 3112.5-2 was violated by these filings because the president and vice-president of Graybill Terminals Company had a fiduciary relationship with the Appellant and consequently increased its chances to succeed in the drawings. See Panra, supra at 222.

Where a corporation and one or more of its officers--stockholders file simultaneous offers for the same tract, any of such offers, if drawn successfully must be rejected, or the lease therefrom cancelled upon discovery of the facts. Richard Donnelly, 11 IBLA 170 (1973). See Schermerhorn Oil Corp., 72 I.D. 486 (1965).<sup>1/</sup>

We note that the Department has held that offers by corporate officers not in competition with the corporation offer are not per se interdicted. Raymond J. Stipek, R. A. Keans, 74 I.D. 57, 60-61 (1967). The duty of a fiduciary to his corporation is his duty to

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<sup>1/</sup> The record does not reveal whether the Boehms are stockholders in Graybill.

the other officers, directors and stockholders of the corporation, and if he has violated his duty to any of these he has breached the trust with respect to the corporation. Id. In essence, if it be shown that a corporate officer who files an oil and gas offer in competition with his corporation is authorized by the by-laws of the corporation to engage in the oil and gas business and he is not a stockholder and has the consent of the stockholders to his engaging in the same business, oil and gas, as the corporation, his offer would appear to be unaffected by the corporate relationship. These showings-have not been made in the cases at bar.

In Alvest, at 398 P.2d 216, the court stated:

Appellant contends that it could not have claimed the benefits of the lease had it been awarded to White or Mueller [both officers and directors of Appellant], because a full disclosure of their actions in filing their individual applications had been made to the corporation, and because the filing of applications by appellant's officers and directors was consistent with corporate policy. There was evidence that the members of appellant's board of directors had generally approved the appropriateness of officers and directors filing on the same land that the corporation had filed on, although it was not established that this in fact had ever been one prior to the filings in this case. But there was no evidence that the shareholders of the corporation had consented to such a policy generally, or that in this particular instance they had approved White's and Mueller's actions in filing a in competition with appellant. In the absence of such approval by the shareholders, the business opportunity in this case was not within the legitimate scope of the individual interests of appellant's officers and directors.

Appellant states that White and Mueller had at all times been open and above board and had acted in good faith in all their dealings here. That is apparently true. But it has no bearing on the decision of the issues in this case. A showing of bad faith is not essential to establish a duty on the part of officers or directors in connection with business opportunities which they wish to acquire for themselves. The fact that a business opportunity is of such a nature that under the particular circumstances of the case it should fairly belong to

the corporation is sufficient to establish a duty on the part of an officer or director to acquire the opportunity for the corporation. [Footnotes omitted.]

The foregoing is applicable to the cases at bar, without a contrary showing.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1 the decisions appealed from are affirmed.

Frederick Fishman  
Administrative Judge

We concur:

Martin Ritvo  
Administrative Judge

Joan B. Thompson  
Administrative Judge

